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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

COLGATE-PALMOLIVE COMPANY,

Plaintiff,

-against-

J.M.D. ALL-STAR IMPORT AND EXPORT, INC.,  
DYCKMAN 116, INC., BROADWAY 5601, INC.,  
FRANKLIN 827, INC., 1508 FLATBUSH SUPERMARKET,  
INC., 153-21 JAMAICA SUPERMARKET, INC., 1559  
WESTCHESTER SUPERMARKET, INC., 184 DYCKMAN  
SUPERMARKET, INC., BROADWAY 157, INC.,  
CHURCH STREET ENTERPRISE, INC., BROADWAY  
5657, INC., NICHOLAS 916, INC., 1940 NOSTRAND  
SUPERMARKET, INC., YONKERS 109, INC., 116TH  
STREET SUPERMARKET, INC., 1623 FLATBUSH AVE.  
ENTERPRISES CORP., 3700 NOSTRAND AVE., INC.,  
ANITA KHANNA, GEETU KHANNA and AJAY SARIN,

Defendants.

DYCKMAN 116, INC., BROADWAY 5601, INC.,  
FRANKLIN 827, INC., 1508 FLATBUSH SUPERMARKET,  
INC., 153-21 JAMAICA SUPERMARKET, INC., 1559  
WESTCHESTER SUPERMARKET, INC., 184 DYCKMAN  
SUPERMARKET, INC., BROADWAY 157, INC.,  
CHURCH STREET ENTERPRISE, INC., BROADWAY  
5657, INC., NICHOLAS 916, INC., 1940 NOSTRAND  
SUPERMARKET, INC., YONKERS 109, INC., 116TH  
STREET SUPERMARKET, INC., 1623 FLATBUSH AVE.  
ENTERPRISES CORP., 3700 NOSTRAND AVE., INC.,  
ANITA KHANNA, GEETU KHANNA and AJAY SARIN,

Third-Party Plaintiffs,

-against-

C & L SALES CORP., DISCOUNT VILLAGE, INC.,  
FUTURE INTERNATIONAL TRADING, CORP., HEENA  
DISTRIBUTORS, LLC, LION TRADING, INC., and REGO  
TRADING, INC.

Third-Party Defendants.

Case No.: 06 CV 2857 (LLS)

**ECF CASE**

**INITIAL DISCLOSURE  
PURSUANT TO FRCP  
26(a)(1) OF  
STORE DEFENDANTS-  
THIRD PARTY PLAINTIFFS  
AS TO THIRD PARTY  
ACTION**

Defendants-Third Party Plaintiffs DYCKMAN 116, INC., BROADWAY 5601, INC., FRANKLIN 827, INC., 1508 FLATBUSH SUPERMARKET, INC., 153-21 JAMAICA SUPERMARKET, INC., 1559 WESTCHESTER SUPERMARKET, INC., 184 DYCKMAN SUPERMARKET, INC., BROADWAY 157, INC., CHURCH STREET ENTERPRISE, INC., BROADWAY 5657, INC., NICHOLAS 916, INC., 1940 NORSTRAND SUPERMARKET, INC., YONKERS 109, INC., 116<sup>TH</sup> STREET SUPERMARKET, INC., 1623 FLATBUSH AVE, ENTERPRISES CORP., 3700 NOSTRAND AVE., INC., ANITA KHANNA GEETU KHANNA and AJAY SARIN (collectively the “Store Defendants/Third-Party Plaintiffs”), by their undersigned counsel, make the following initial discoverable disclosures, pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, to the best of their knowledge:

**DEFINITIONS:**

1. The term “Complaint” refers to the First Amended Complaint of Plaintiff Colgate-Palmolive Company filed in the United States Court for the Southern District of New York on July 13, 2006 in the civil action bearing the number 06-CV-2857 (LLS).
2. The terms “Plaintiff” or “Colgate” refer to Colgate-Palmolive Company.
3. The terms “Stores” or “16 Stores” refer to the following entities, also each designated by a particular store number, which are among the named Store Defendants/Third Party Plaintiffs:

| <b><u>Store #</u></b> | <b><u>Store Defendants/Third Party Plaintiffs</u></b> |
|-----------------------|---|
| Store #1              | Dyckman 116 Inc.                                      |
| Store #2              | Broadway 5601 Inc.                                    |
| Store #3              | Franklin 827 Inc.                                     |
| Store #4              | 1508 Flatbush Supermarket, Inc.                       |

|           |  |
|-----------|--|
| Store #5  | 153-21 Jamaica Supermarket, Inc.           |
| Store #6  | 1559 Westchester Supermarket, Inc.         |
| Store #7  | 184 Dyckman Supermarket, Inc.              |
| Store #8  | Broadway 157 Inc.                          |
| Store #9  | Church Street Enterprises, Inc.            |
| Store #10 | Broadway 5657, Inc.                        |
| Store #11 | Nicholas 916, Inc.                         |
| Store #12 | 1940 Nostrand Supermarket, Inc.            |
| Store #13 | Yonkers 109, Inc.                          |
| Store #14 | 116 <sup>th</sup> Street Supermarket, Inc. |
| Store #15 | 1623 Flatbush Avenue Enterprises Corp.     |
| Store #16 | 3700 Nostrand Avenue, Inc.                 |

4. The term the “Colgate Marks” refers to the trademarks and trade dress identified in paragraphs 42 through 56 of the Plaintiff Colgate’s Complaint.

A. Knowledgeable Persons. The following persons and/or entities are likely to have discoverable information the disclosing party may use to support their defenses/claims in this action including the purchase and/or sale of retail product, including COLGATE and/or COLDDATE marked toothpaste:

1. Ajay Sarin, 316 Westagate Dr., Edison, NJ 08820, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products.
2. Lal Singh, 2060 Holland Way, Merrick, NY 11566, phone no. 516-771-4614, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #1.
3. Kenia Jimenez, 130 W. 228<sup>th</sup> Street, #5-E, Bronx, NY 10463, phone no. 646-644-3472, regarding the sale of COLGATE toothpaste products as to Store #2.
4. Manjit Kaur, 2060 Holland Way, Merrick, NY 11566, phone no. 516-771-4614, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #3.
5. Nadia Benelali, 148 Rogers Ave., #4-B, Brooklyn, NY 11216, phone no. 646-249-9770, regarding the sale of products as to Store #4.

6. Monica Gumaste, 87 East End Ave., Hicksville, NY 11801, phone no. 516-495-4528, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #5.
7. Kazi Hossain, 59-55 47<sup>th</sup> Ave., #9-C, Woodside, NY 11377, phone no. 718-476-8060, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #6.
8. Chander Shekher, 34-47 90<sup>th</sup> Street, #G-51, Jackson Heights, NY 11372, phone no. 718-429-5199, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #7.
9. Mobid Hossain, 2839 Valentine Avenue, #4-E, Bronx, NY 10458, phone no. 718-367-4788, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #8.
10. Jean Erick Adolphe, 621 Crown Street, #B-11, Brooklyn, NY 11213, phone no. 718-953-9266, regarding the sale of COLGATE toothpaste products in Store #16.
11. Tajammal Hussian, 78 Thayer Street, #5-D, New York, NY 10040, phone no. 212-304-3746, regarding the sale of COLGATE toothpaste products as to Store #10.
12. Diabate Zakarya, 310 W. 116<sup>th</sup> Street, #2-B, New York, NY 11566, phone no. 212-665-9309, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #11.
13. Ana Fernandez, 1487 E. 37<sup>th</sup> Street, #B-4, Brooklyn, NY 11234, phone no. 718-338-6660, regarding the sale of COLGATE toothpaste products as to Store #12.
14. Ashan Habib, 2110 Barnes Avenue #5-B, Bronx, NY 10462, phone no. 347-621-0600, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #13.
15. Ganesh Lamsal, 1709 Summerfield Street, Ridgewood, NY 11385, phone no. 718-455-4744, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #14.
16. Bharat Singh, 1310 41<sup>st</sup> Street, #2-F, Brooklyn, NY 11218, phone no. 718-437-5325, regarding the purchase and sale of COLGATE and COLDDATE toothpaste products as to Store #15.
17. Gyan Adhikari, 1605 Putnam Ave., #3-F, Ridgewood, NY 11385, phone no. not available. Former manager of Store #16, who may have information regarding the purchase and sale of COLGATE toothpaste products as to Store #16.

18. Shaikh A. Rahman, 43-19 58<sup>th</sup> Street, #1, Woodside, NY 11377, phone no. not available. Former employee of Store #14 who may have information regarding the purchase and sale of COLGATE toothpaste products as to Store #14.
19. Hari Kafle, 1605 Putnam Ave. Ridgewood, NY 11385, phone 718-628-5813. Former manager of Store #16 who may have information regarding the purchase and sale of COLGATE toothpaste products as to Store #16.
20. C&L Sales Corp., 156 35<sup>th</sup> Street, Brooklyn, NY 11232, regarding sale of COLGATE products to Store Defendants.
21. Discount Village, 10 Hub Drive. Melville, NY 11747, regarding sale of COLGATE products to Store Defendants.
22. Future International Trading Co., 8509 Bay 16 Street, Brooklyn, NY 11214, regarding sale of COLGATE products to Store Defendants.
23. Heena Distributors, LLC, 180-08 Liberty Avenue, Jamaica, NY 11433, regarding sale of COLGATE products to Store Defendants.
24. Lion Trading, Inc., 56 Passaic Street, Wood-Ridge, NJ 07075, regarding sale of COLGATE products to Store Defendants.
25. Rego Trading, Inc., 200 Liberty Street, Metuchen, NJ 08840, regarding sale of COLGATE products to Store Defendants.
26. Vipul International, 210 Cedar Lane, Suite 7-B, Teaneck, NJ 07666, regarding sale of COLGATE products to Store Defendants.
27. Mr. Aydin Torun, 98-30 67<sup>th</sup> Avenue, Apt 6-S, Rego Park, New York 11374, regarding his letter to Plaintiff Colgate, dated February 22, 2006, advising of alleged “knock-offs” of COLGATE toothpaste being sold at Store #14.

B. The following material in the disclosing parties’ possession that the disclosing parties may use to support their claims or defenses in this action is identified as follows:

1. Store purchases of COLDDATE from vendors, document nos. D01-D035.
2. Store purchases of COLGATE from vendors, document nos. D049-D083.
3. Store #16 COLGATE purchases, document nos. D0105-D0118.
4. Store purchases & vendor price lists, document nos. D0288-D0331.

5. Vendor price lists, document nos. D0332-D0355.
6. Invoices from vendors for COLGATE purchases, document nos. D0816-D0944.
7. Invoices from JMD All-Star Import Export, Inc. for purchases of COLGATE by Store Defendants, document nos. D0945-D0973.
8. Documents produced by Plaintiff Colgate, including:
  - i. Aydin Torun correspondence with Colgate, document nos. CP-00483 – CP-00485. Mark by Plaintiff Colgate as “Confidential.”
  - ii. Colgate evidence receipts, document nos. CP-00487 – CP-00519. Mark by Plaintiff Colgate as “Confidential.”
  - iii. Colgate counterfeiting report, document nos. CP-00529 – CP-00538. Mark by Plaintiff Colgate as “Confidential.”
  - iv. Colgate’s Diverted/Counterfeit Dental Creams report, document nos. CP-00540 – CP-00560. Mark by Plaintiff Colgate as “Confidential.”
  - v. Colgate’s investigator’s report, document nos. CP-00561 – CP-00573. Mark by Plaintiff Colgate as “Confidential.”
  - vi. Colgate’s Diverted/Counterfeit Dental Creams report, Dec. 6, 2006, document no. CP-00781. Marked by Plaintiff Colgate for “Attorney’s Eyes Only.”
  - vii. Colgate’s Diverted/Counterfeit Dental Creams report, Dec. 8, 2006, document no. CP-00782. Marked by Plaintiff Colgate for “Attorney’s Eyes Only.”

**PLEASE TAKE NOTE:** Various documents identified above, particularly documents previously produced by Plaintiff Colgate, are marked “Confidential” or “For Attorney’s Eyes Only” and are covered by the Stipulated Protective Order, entered on September 27, 2007 (the “Protective Order”). Receipt of copies of this document production by counsel for Third-Party Defendants shall constitute their consent and the consent of their respective clients to the terms and limitations of the Protective Order; copies of the above identified documents will be

produced to counsel for Third-Party Defendants upon receipt of their written acknowledgments of their consent to the Protective Order.

C. Damages. Since the bases for plaintiff Colgate-Palmolive Company's causes of action against Store Defendants/Third Party Plaintiffs in the principal action are predicated on the sale of goods that Store Defendants/Third Party Plaintiffs purchased from various third party vendors, including Third Party Defendants herein, therefore in the event Store Defendants/Third Party Plaintiffs are found liable to Plaintiff Colgate then Third Party Defendants are liable to Store Defendants/Third Party Plaintiffs to the extent of said liability to Plaintiff Colgate, plus costs and attorney's fees, on the basis of:

1. Common law indemnification and breach of contract, as set forth in the Third-Party Complaint at ¶¶ 59-66;
2. Third-Party Defendants' breach of the warranty implied at law pursuant to New York UCC § 2-312(3), which provides that goods shall be delivered free of the rightful claim of any third person by way of infringement, as set forth in the Third-Party Complaint at ¶¶ 67-79;
3. Third-Party Defendants' breach of New York UCC § 2-314, which provides that a warranty of merchantability is implied at law to the sale of goods, since the goods purchased for resale Store Defendants/Third Party Plaintiffs were materially defective, allegedly having insufficient fluoride and allegedly failing to comply to standards for toothpaste, as set forth in the Third-Party Complaint at ¶¶ 80-92.

It is premature to compute damages in light of the fact that the scope of damages in the third-party action is entirely dependent on Plaintiff Colgate prevailing on its claims against Store Defendants/Third Party Plaintiffs. Plaintiff Colgate has already indicated in its initial disclosure

statement that the extent of its prospective damages have yet to be fully realized as discovery in this matter remains ongoing. Consequently, Store Defendants/Third Party Plaintiffs cannot at this time estimate the nature or extent of their damages suffered as a consequence of Third-Party Defendant's actions. Plaintiff Colgate may also seek statutory damages pursuant to 15 U.S.C. § 1117 for each of the Colgate Marks that were allegedly infringed from each of the named Defendants, for which Store Defendants/Third Party Plaintiffs will seek indemnification and recovery from Third-Party Defendants. Furthermore, Plaintiff Colgate has alleged that Defendants willfully sold counterfeit goods and on that basis has indicated it may elect to seek statutory damages of up to one million dollars per counterfeit mark per Defendant, pursuant to 15 U.S.C. § 1117(c). If found liable to Plaintiff Colgate, Store Defendants/Third Party Plaintiffs will seek full indemnification from Third Party Defendants, jointly and severally. Therefore, Store Defendants/Third Party Plaintiffs are not able to calculate their damages at this time and reserves the right to supplement these disclosures with respect to the computation of its damages.

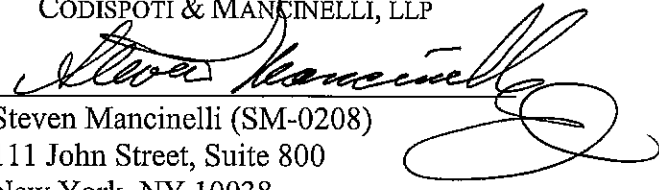
D.     Insurance.     The Store Defendants/Third Party Plaintiffs have commercial general liability insurance policies with CNA Insurance (“CNA”); however, on August 11, 2006, CNA declined to defend or indemnify the Store Defendants/Third Party Plaintiffs in this matter. Therefore, the Store defendants/Third Party Plaintiffs have no applicable insurance coverage at this time for this matter nor is such insurance coverage applicable to the prosecution of claims against Third-Party Defendants.

Store defendants/Third Party Plaintiffs reserves the right to amend or supplement the preceding disclosure up to and including the date of trial.

Dated: New York, New York  
October 1, 2007

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## CERTIFICATE OF SERVICE

Steven Mancinelli, an attorney duly admitted to practice before this District Court, hereby declares and certifies, under penalty of perjury, that October 1, 2007, he served a copy of the foregoing INITIAL DISCLOSURE PURSUANT TO FRCP 26(a)(1) OF STORE DEFENDANTS/THIRD PARTY PLAINTIFFS AS TO THIRD PARTY ACTION, by U.S. First Class Mail, postage prepaid thereon, upon:

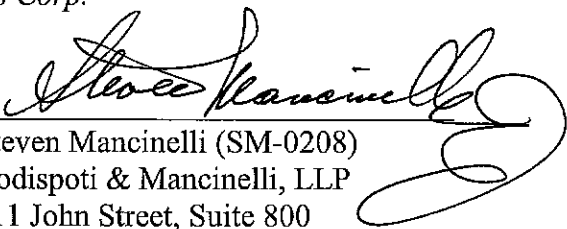
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